

## New Jersey Reaches Consent Order with Yellowstone Capital Regarding MCA Agreements

February 28, 2023 | [Katherine C. Fisher](#) and [Eric D. Mulligan](#)

On December 27, 2022, New Jersey's Attorney General and Office of Consumer Protection and Yellowstone Capital, LLC and several other associate companies signed a consent order to resolve a lawsuit that alleged violations of the New Jersey Consumer Fraud Act and Regulations Governing General Advertising. The order requires Yellowstone to modify its merchant cash advance agreements extensively, as well as its practices for servicing the agreements. The order focuses especially on the "reconciliation" provisions of the agreements. Generally, a reconciliation provision allows a merchant to adjust its payment obligation to align with the merchant's actual revenue. Under the order, a reconciliation provision:

- must allow a merchant to request reconciliation more than five days after the start of the month;
- must provide a look-back period equal to the life of the transaction rather than only one month; and
- must not allow a reconciliation to result in the merchant owing additional money.

Yellowstone agreed to provide these benefits to both new and existing MCA customers, and it may not attempt to collect any unpaid balance while a reconciliation request is pending. The order also requires Yellowstone to conduct an internal review of a transaction before it declares a default with respect to that transaction. The order prohibits certain terms in an MCA agreement, including but not limited to:

- provisions requiring a merchant to waive all legal claims against Yellowstone;
- provisions requiring a merchant to waive objections to jurisdiction and venue; and
- provisions establishing that 25% of the accelerated unpaid balance is a reasonable attorney fee and that Yellowstone need not prove the reasonableness of such a fee.

The order also establishes specific disclosure requirements, including a requirement that Yellowstone disclose fees as dollar amounts rather than percentages. It requires Yellowstone to terminate a UCC financing statement without further action by a merchant

when the merchant has satisfied its obligations under an MCA agreement. Yellowstone must inform its third-party service providers about the requirements of the order and require by contract that those providers follow the applicable provisions of the order.

As part of the order, the parties agreed to pay about \$27 million, including about \$22 million in forgiveness of its customers' outstanding obligations and about \$5 million to the Office of Consumer Protection. The parties also must report to the Office of Consumer Protection the names and addresses of the businesses whose obligations are forgiven under the order, as well as the names of the associated guarantors and the dates of the MCA agreements. The parties will be subject to the order for 10 years after the order's effective date. A copy of the consent order is available [here](#).

Hudson Cook, LLP provides articles, webinars and other content on its website from time to time provided both by attorneys with Hudson Cook, LLP, and by other outside authors, for information purposes only. Hudson Cook, LLP does not warrant the accuracy or completeness of the content, and has no duty to correct or update information contained on its website. The views and opinions contained in the content provided on the Hudson Cook, LLP website do not constitute the views and opinion of the firm. Such content does not constitute legal advice from such authors or from Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.

**SUBSCRIBE TO INSIGHTS**

# HUDSON COOK

Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

7037 Ridge Road, Suite 300, Hanover, Maryland 21076  
410.684.3200

**[hudsoncook.com](https://hudsoncook.com)**

© Hudson Cook, LLP. All rights reserved. Privacy Policy | Legal Notice  
Attorney Advertising: Prior Results Do Not Guarantee a Similar Outcome

